

REMARKS

I. Amendments

A. Amendments to the Specifications

The specification has been amended to correct a typographical error and to properly designate a trademark. Support for the fact that the correction is merely a typographical error may be found, *inter alia*, in the specification at page 2, lines 22-26, and page 9, lines 20-22.

Applicant respectfully requests entry of the above amendments and submits that no new matter is added.

B. Amendments to the Claims

Reconsideration of the rejections in the Application is respectfully requested. Upon entry of the foregoing amendment, claims 27, 29, 31-33, 35-40, 44, 48-52, 54, 56-64, 67, and 71-76 will be pending. Claims 27, 29, 31-33, 35-40, 44, 48-54, 56-64, 67, and 71-76 stand rejected. Applicant notes that claim 34 is also rejected; however, Applicant respectfully points out that claim 34 was previously canceled in an Amendment filed January 9, 2006. Claims 27 and 52 are amended.

Applicant respectfully requests entry of the above amendment and submits that the amendment does not introduce new matter. Support for the amendment to the claims can be found throughout the specification (considered as a whole) and in the claims as originally filed. In particular, support for the amendment to claims 27 and 52 can be found, *inter alia*, in the specification at page 10, lines 31-34, and page 11, lines 17-21.

Based on the above amendments and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

II. Non-Statutory Obviousness-Type Double Patenting Rejection

The Advisory Action asserted that although copending U.S. Application No. 11/469,213, filed November 30, 2006 ("the '213 Application"), claims a method of treating incontinence, the augmentation occurs in the areas around the sphincter, which is the soft tissue surrounding the muscle of the sphincter. *See* Advisory Action, p. 2. The Advisory Action further asserts that the claimed augmentation of soft tissue in the present application would result in a similar expectation of beneficial results given in the claims of the '213 Application. *See id.*

M.P.E.P. § 1490(V)(D) states:

If the [obviousness-type double patenting (“ODP”)] rejection is the only rejection remaining in the earlier filed of the two pending applications, (but the later-filed application is rejectable on other grounds), the examiner should then withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. . .

If ODP rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application be permitted to issue.

M.P.E.P. (8th ed. rev. 5) at 1400-106 to 1400-107.

As of the filing of this Supplemental Amendment, examination of the '213 Application has not yet begun. Because the present application is the earlier-filed application and the only remaining rejection is the obviousness-type double patenting rejection, Applicant respectfully requests that the rejection be withdrawn and that the application be allowed to issue without a terminal disclaimer. If the '213 Application is rejected for obviousness-type double patenting in view of the present application once it does enter examination, Applicant will file a terminal disclaimer in the '213 Application.

For at least the aforementioned reason, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

III. Statement

Examiner Carlos Azpuru and Applicant's representative, Victoria Silcott, held a telephonic Examiner interview on March 30, 2007. Applicant thanks Examiner Azpuru for his time and attention.

During the interview, Applicant's representative inquired as to whether the Examiner would be amenable to amending independent claims 27 and 52 to read “wherein the crosslinking consists essentially of the use of methylene bis-acrylamide as a cross-linker.” Applicant's representative stated that the amendment would specify that the cross-linker used is methylene bis-acrylamide. However, the chemical reaction involved with the polymerization would not be limited to the crosslinking of methylene bis-acrylamide because other crosslinking (such as

between acrylamide units and/or reactive derivatives thereof) may occur during the chemical reaction. Examiner Azpuru stated that the amendment would be acceptable.

CONCLUSION

For at least the reasons stated above, claims 27, 29, 31-33, 35-40, 44, 48-52, 54, 56-64, 67, and 71-76 are in condition for allowance. Accordingly, Applicant respectfully requests that the Application be allowed and passed to issue.


In the event any outstanding issues remain, Applicant would appreciate the courtesy of a telephone call to Applicant's undersigned representative to resolve such issues in an expeditious manner.

It is believed that no additional fees are due with the filing of this Response. However, if the U.S. Patent and Trademark Office determines that any variance exists between the amount due and the amount authorized above, the Commissioner is authorized to credit or debit any such variance to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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